

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASHINGTON APPLE COMMISSION, a  
Washington corporation,

Plaintiff,

v.

CASUAL INDUSTREES LLC, a Washington  
limited liability company,

Defendant.

No. \_\_\_\_\_

COMPLAINT FOR FALSE  
DESIGNATION OF ORIGIN,  
TRADEMARK INFRINGEMENT,  
UNFAIR COMPETITION, AND  
VIOLATIONS OF THE  
WASHINGTON CONSUMER  
PROTECTION ACT

Plaintiff, WASHINGTON APPLE COMMISSION (“WAC”), by and through its undersigned counsel, respectfully makes the following allegations for its Complaint against Defendant, CASUAL INDUSTREES LLC (“CIL”). These allegations are made upon knowledge with respect to WAC and its own acts, and upon information and belief as to all other matters.

**I. INTRODUCTION**

1. WAC was created by an act of the Washington State Legislature in 1937 at the request of the Washington apple industry. For 75 years, WAC has been advertising and promoting Washington apples as well as developing and expanding markets to increase the consumption of Washington apples, both in the United States and throughout the world. It is one of the oldest and largest commodity commissions in the United States, and its distinctive Washington Apple trademark:



(the “Apple Trademark”) is synonymous with Washington grown apples. As part of the Commission’s efforts to increase the consumption of Washington apples, WAC has been distributing clothing identified by the Apple Trademark for more than 30 years.

2. In an effort to trade on the substantial goodwill and recognition in the Apple Trademark, CIL has intentionally imitated the Apple Trademark to help sell its competing clothing products. CIL’s actions are likely to cause, and no doubt already have caused, confusion among consumers seeking to purchase genuine WAC products.

3. WAC has attempted to resolve this matter without resorting to the Court, but has been repeatedly rebuffed by CIL. Because CIL has unlawfully copied WAC’s valuable Apple Trademark and refused to engage in meaningful dialogue or comply with WAC’s demands, WAC has been forced to bring this action.

## II. PARTIES

4. Plaintiff WAC is a Washington corporation, having a place of business at 2900 Euclid Avenue, Wenatchee, Washington 98807.

5. Defendant CIL is a Washington limited liability company, having a place of business at 6205 SW Admiral Way, Seattle, WA 98116

## III. JURISDICTION AND VENUE

6. This is a civil action for false designation of origin, trademark infringement, and unfair competition arising under the common law and the Lanham Act, 15 U.S.C. § 1051 et seq., and for violations of the Washington State Consumer Protection Act, RCW Ch. 19.86. Federal subject matter jurisdiction is found in 28 U.S.C. §§ 1331 (federal question), 1367 (supplemental), 1338(a) (trademark), and 1338(b) (related claims of unfair competition), and 15 U.S.C. § 1121 (Lanham Act actions).

7. CIL is located and regularly does business in this judicial district. CIL has also committed acts of false designation of origin, trademark infringement, and unfair competition, and violations of the Washington State Consumer Protection Act by selling, distributing, advertising, and marketing its infringing products in this judicial district.

8. Venue is proper in this district under 28 U.S.C. § 1391.

#### IV. PLAINTIFF WAC'S RIGHTS

9. WAC is one of the oldest and largest commodity commissions in the United States. Created by the Washington State legislature in 1937, WAC has been continuously working for the last 75 years on behalf Washington apple growers to increase the consumption of Washington apples by providing advertising for, promotion of, and education about Washington apples as well as developing and expanding markets for Washington apples.

10. As a result of its long history— as well as the quality of the Washington apples WAC promotes—the Apple Trademark, WAC's primary identifier, is widely recognized throughout the United States and the world. The worldwide public has come to rely upon and look for the Apple Trademark to identify apples originating from Washington State. As a consequence, the Apple Trademark has come to symbolize valuable goodwill and reputation. WAC has promoted the Apple Trademark throughout the United States and the world. WAC owns registration for the Apple Trademark in 37 separate jurisdictions encompassing over 60 separate countries which span the globe.

11. As part of its extensive efforts to promote the consumption of Washington apples, WAC has widely distributed and licensed clothing identified by the Apple Trademark. Clothing identified by the Apple Trademark is desirable because of its association with Washington apple growers, because sales proceeds help fund WAC's services, and because the Apple Trademark is so widely recognized that it has been become desirable in its own right.

12. WAC is the owner of the United States Trademark Registration No. 1,294,529 for the Apple Trademark for use in connection with clothing, namely jackets, sweaters, t-shirts, dress shirts, sport shirts, neckties and caps. The application for this registration was registered

on September 11, 1984. The registration is valid and subsisting. The registration is also incontestable pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1065. A copy for the registration certificate for U.S. Registration No. 1,294,529 is attached as Exhibit A.

13. In addition to WAC's U.S. federal registration, WAC owns significant common law rights in and to the Apple Trademark. WAC's U.S. federal trademark rights and common law trademark rights are collectively referred to as the WAC Trademarks.

14. WAC has previously licensed the WAC Trademarks to third parties for use on clothing.

## V. CIL INFRINGING ACTIVITIES

15. Started in 1998, CIL offers a variety of different clothing products including t-shirts, jackets, hats, and sweatshirts.

16. CIL's products are distributed through its website at <casualindustrees.com>.

17. CIL's products are also distributed through a number of different partner retailers throughout the United States, including Nordstrom, Tilly's, and Evo. CIL's retailer distributors have physical locations in Alaska, California, Colorado, Idaho, Minnesota, Montana, Oregon, Utah, Washington, and Wyoming.

18. CIL's busiest time of the year for the sale of its products is the holiday season in the fourth quarter of the year. During this season, CIL sells the most product.

19. CIL is currently selling shirts with the design:



(the "Infringing Product").  
through CIL's website and

The Infringing Product has been sold  
is being sold throughout the United

States by CIL's retail partners.

20. The Infringing Product features a design that is confusingly similar to the WAC Trademarks.

21. CIL has intentionally chosen a design that is confusingly similar to the WAC Trademarks. CIL's description of its Infringing Product is "Nobody does it better. It's like Idaho potatoes or Jennifer Lopez and failed marriages." CIL's description is intended to create an association with WAC by alluding to the widely known relationship between the WAC Trademarks and apples.

22. Consumers are likely to mistakenly believe that the Infringing Products originate from, are licensed by, or are otherwise associated with WAC.

23. In additional copying the WAC Trademarks, CIL has a pattern of copying other well-known trademarks to profit at their owners' expense. CIL is currently selling other products that infringe a number of well recognized trademarks:

MARK	OWNER	INFRINGING CIL PRODUCT
	Nike, Inc.  Reg. No. 1,558,100	
	Pabst Brewing Company  <i>See, e.g.,</i> Reg. No. 542,096 Reg. No. 3,886,268	

As shown by CIL's pattern of behavior, CIL was aware of the WAC Trademarks and intentionally sought to copy the WAC Trademarks to profit at the expense of WAC.

# **VI. WAC'S ATTEMPTS TO RESOLVE THIS MATTER**

24. WAC initially attempted to contact CIL about its infringement through the "contact us" form on CIL's website. When WAC did not receive an immediate response, it referred this matter to its attorneys.

25. On November 28, 2012, counsel for WAC contacted CIL about setting up a teleconference to discuss this matter. CIL responded on November 30, 2012 asking for all correspondence to be in writing.

26. On December 5, 2012, counsel for WAC sent CIL a letter demanding that CIL immediately stop all infringing behavior. The letter demand that CIL comply with WAC's terms by December 10, 2012. A copy of the letter is attached as Exhibit B.

27. It was very important that CIL immediately cease all sale of the Infringing Products in order to mitigate damages from the continued sale during CIL's busiest sale period of the year.

28. On December 10, 2012, CIL replied that it would supply a substantive response to WAC's terms after the holidays, stating that "this is [CIL's] busiest time of the year." Counsel for WAC replied the same day demanding that CIL immediately stop all sales of infringing product.

29. When CIL did not respond, counsel for WAC sent further correspondence stating that WAC would enforce its rights in Court if CIL did not immediately comply with WAC's terms. WAC informed CIL that it would seek reimbursement for attorneys' fees and costs if it was necessary to enforce WAC's rights in Court.

30. CIL has not provided any substantive response to counsel for WAC, nor has it complied with WAC's request to stop selling Infringing Product. The Infringing Product continues to be sold by CIL.

## VII. THE HARM TO WAC AND THE PUBLIC CAUSED BY CIL

31. CIL's unlawful use of the WAC Trademarks has caused irreparable harm to WAC's reputation and goodwill. WAC will continue to suffer irreparable injury to its reputation and goodwill unless CIL is enjoined from continuing the conduct complained of, which injury cannot be adequately compensated monetarily. As long as CIL is allowed to continue the acts complained of, WAC's reputation is at CIL's mercy.

32. CIL unlawful use of the WAC Trademarks has also redirected money to CIL that should have gone to WAC. CIL's unlawful use, if allowed to continue, will also decrease WAC's ability to license the WAC Trademarks to third parties in future.

33. Upon learning of CIL's infringing activity, WAC took immediate steps to notify CIL as to the infringement and to seek CIL's help in mitigating damages. CIL refused to cooperate with WAC's requests, but continued—and continues to sell—the infringing product. CIL response to WAC makes clear that CIL does not wish to address its infringement until after its “busiest time of the year”, thereby allowing it to profit from its infringement as much as possible.

### COUNT 1

#### FALSE DESIGNATION OF ORIGIN UNDER THE LANHAM ACT

34. WAC realleges all preceding allegations of this Complaint as if stated herein.

35. CIL's actions described herein constitute false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1125(a).

### COUNT 2

#### FEDERAL TRADEMARK INFRINGEMENT

36. WAC realleges all preceding allegations of this Complaint as if stated herein.

37. CIL's actions described herein constitute infringement of WAC's U.S. Registration No. 1,294,529, in violation of the Lanham Act, 15 U.S.C. §§ 1114 1118.

38. CIL's actions were willful and intentional, so that this is an exceptional case pursuant to 15 U.S.C. § 1117.

**COUNT 3**

**COMMON LAW TRADEMARK INFRINGEMENT AND  
UNFAIR COMPETITION**

39. WAC realleges all preceding allegations of this Complaint as if stated herein.

40. CIL's actions described herein constitute common law trademark infringement and unfair competition in violation of the laws of the State of Washington and the laws of the other states of the United States.

**COUNT 4**

**VIOLATIONS OF THE WASHINGTON  
STATE CONSUMER PROTECTION ACT**

41. WAC realleges all preceding allegations of this Complaint as if stated herein.

42. CIL's conduct described herein constitutes an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020 that has harmed WAC in its business and property. WAC is entitled to recover damages, treble damages up to \$10,000, and attorneys' fees pursuant to RCW 19.86.090.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff WAC prays for relief against Defendant CIL as follows:

A. Entry of a permanent injunction enjoining CIL and its servants, agents, employees, successors and assigns, and all persons acting in concert with them, from:

(1) using in any manner the Apple Trademark (including the mark shown by the Registration No. 1,294,529) or any other mark confusingly similar thereto (including CIL's current use on the Infringing Product);

(2) infringing WAC's trademarks, trade dress, and copyrights; and

B. Requiring CIL to deliver up to WAC for destruction all goods, signs, advertisements, literature, business forms, cards, labels, packages, wrappers, pamphlets, brochures, receptacles, and any other written or printed material in their possession or under



1 their control which contain or encompass the Apple Trademark, or any colorable imitations  
2 thereof or any marks or trade dress confusingly similar thereto or which contain any false or  
3 misleading representation of fact;

4 C. Awarding compensatory damages sustained by WAC and profits generated by  
5 CIL as a result of the acts complained of herein pursuant to federal and state law, to be trebled  
6 in accordance with 15 U.S.C. § 1117;

7 D. Awarding WAC its attorneys' fees pursuant to 15 U.S.C. § 1117, RCW 19.86.90  
8 and other applicable federal and state laws;

9 E. Awarding WAC interest, costs, and such other relief as the Court may deem just  
10 and equitable.

11 **JURY DEMAND**

12 WAC hereby demands a trial by a jury of all issues so triable.

13 DATED this 12th day of December, 2012.

14 Davis Wright Tremaine LLP  
15 Attorneys for Plaintiff

16 By s/ Cindy L. Caditz  
17 Cindy L. Caditz, WSBA No. 16701  
18 Suite 2200  
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Fax: 206-757-7700  
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Attorneys for Plaintiff

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## **EXHIBIT A**



## United States Patent and Trademark Office

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**Word Mark**  
**Goods and Services**

WASHINGTON

IC 031. US 046. G & S: UNPROCESSED **APPLES**. FIRST USE: 19821100. FIRST USE IN COMMERCE: 19821100

(CANCELLED) IC 032. US 045 046 048. G & S: [ **APPLE JUICE** ]. FIRST USE: 19821100. FIRST USE IN COMMERCE: 19821100

IC 035. US 100 101 102. G & S: ADVERTISING COMMISSION SERVICES, NAMELY, PROMOTING THE INTERESTS OF THOSE GROWING, PROCESSING, PACKING AND SHIPPING **APPLES** IN THE STATE OF WASHINGTON. FIRST USE: 19821100. FIRST USE IN COMMERCE: 19821100

**Mark Drawing Code**

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code**

05.09.05 - Apples

**Serial Number**

73575663

**Filing Date**

December 30, 1985

**Current Basis**

1A

**Original Filing Basis**

1A

**Published for Opposition**

December 13, 1988

**Change In**

CHANGE IN REGISTRATION HAS OCCURRED

**Registration****Registration  
Number**

1528514

**Registration  
Date**

March 7, 1989

**Owner**

(REGISTRANT) WASHINGTON STATE APPLE ADVERTISING COMMISSION AKA  
**WASHINGTON APPLE** COMMISSION CORPORATION WASHINGTON P.O. BOX 18  
WENATCHEE WASHINGTON 98801

(LAST LISTED OWNER) **WASHINGTON APPLE** COMMISSION CORPORATION WASHINGTON  
2900 Euclid Avenue WENATCHEE WASHINGTON 98807

**Assignment  
Recorded**

ASSIGNMENT RECORDED

**Attorney of  
Record**

Cindy L. Caditz

**Prior  
Registrations**

0730583;0730584

**Type of Mark  
Register**

TRADEMARK. SERVICE MARK  
PRINCIPAL-2(F)

**Affidavit Text**

SECT 15. SECT 8 (6-YR). PARTIAL SECTION 8(10-YR) 20090504.

**Renewal**

1ST RENEWAL 20090504

**Live/Dead  
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## **EXHIBIT B**



Suite 2200  
1201 Third Avenue  
Seattle, WA 98101-3045

Cindy L. Caditz  
206-757-8097 tel  
206-757-7097 fax

cindycaditz@dwt.com

December 5, 2012

**VIA EMAIL**  
**Confirmation Copy via Mail**

Daniel M. Reid  
Casual Industrees LLC  
6205 SW Admiral Way  
Seattle, WA 98116

Re: Washington Apple Commission v. Casual Industrees, LLC  
Our Reference: 91261-186

Dear Dan:

We are writing to you on behalf of our client the Washington Apple Commission. For many decades the Washington Apple Commission has promoted the consumption of Washington apples and products made from Washington apples through a campaign of extensive advertising and promotional efforts. For more than thirty years, all of the advertising and promotional efforts of the Commission as well as the product licensed or distributed by the Commission have been identified by the trademark WASHINGTON and Design shown in the attached Exhibit A. The WASHINGTON and Design trademark has now become one of the most famous and widely recognized indications of origin in the apple industry and among consumers.

This mark continues to be used by the Washington Apple Commission and is recognized not only in the United States, but throughout the world.

We have recently become aware that Casual Industrees has been selling the t-shirt shown in the attached Exhibit B on which an obvious copy of the WASHINGTON and Design trademark is imprinted. Moreover, the intention of Casual Industrees to associate itself with the products and services of the Washington Apple Commission is evidenced by the description of the product that indicates "it's like Idaho potatoes...."

Your use of a copy of the WASHINGTON and Design trademark infringes rights owned by the Washington Apple Commission. Because you were aware that the WASHINGTON and Design mark is a registered trademark owned by the Washington Apple Commission, federal law provides the Commission may recover three times the amount of damages proven at trial and also seek recovery of attorneys' fees and costs.

DWT 20762016v1 0091261-000186

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Daniel M. Reid  
Casual Industrees LLC  
December 5, 2012  
Page 2

Because we have no reason to believe that your adoption and use of our client's trademark was anything other than an error in judgment, we will recommend that our client forego bringing a claim of infringement to seek recovery of damages and injunctive relief if you will provide us with your agreement to the following terms:

1. Immediately stop all sale of product bearing the logo shown in the attached Exhibit B and any other logo confusingly similar to the famous mark WASHINGTON and Design shown in the attached Exhibit A. In this regard, please advise us of the amount of product you have in inventory bearing the mark shown in Exhibit B. When we receive your response, the Commission can consider whether they are willing to permit you to sell your existing inventory. You must confirm you will not order any new product bearing the infringing mark or any other mark similar to the WASHINGTON and Design trademark shown in Exhibit A.
2. Provide us with your express agreement to refrain from the adoption, use, or registration of any mark that is confusingly similar to the famous WASHINGTON and Design mark shown in the attached Exhibit A anywhere in the world.
3. Provide us immediately with the names and circumstances of any instance in which a third party has mistakenly believed that the products of Casual Industrees are associated with, endorsed by, or originate from the Washington Apple Commission or the State of Washington.

Please provide us with your written response to this request by no later than **December 10, 2012** so that our client is able to evaluate the next appropriate steps in this matter.

We look forward to hearing from you.

Very truly yours,

Davis Wright Tremaine LLP

  
Cindy L. Caditz

CLC:rer

cc: Washington Apple Commission  
DWT 20762016v1 0091261-000186





EXHIBIT A





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Store » MENS » Product of WA (more colors)

#### MENS

Tees  
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Jackets

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#### Colors

Select an option

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1

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POWA-MT-HG

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**Tax is included in the price:**